

COLOYAN vs. BADUA, et al.

ROBERT C. MARVIT, M.D.
January 12, 2006

SHEET 1 PAGE 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
3
4 OFELIA COLOYAN,) CIVIL NO. CV03-476 KSC
5 Plaintiff,)
6 vs.)
7 WILLIAM P. BADUA;)
8 JEFFREY OMAI;)
9 SPENCER ANDERSON;)
10 NEIL PANG; and DOES 5-10.)
11 Defendants.)
12
13 DEPOSITION OF ROBERT C. MARVIT, M.D.
14 Taken on behalf of Defendants at 1314 South King
15 Street, Suite 862, Honolulu, Hawaii, commencing
16 at 2:00 p.m., on Thursday, January 12, 2006,
17 pursuant to Federal Rules of Civil Procedure.
18 BEFORE: PHYLLIS K. KUSHINER, CSR NO. 147
19 Notary Public, State of Hawaii
20 H O N O L U L U R E P O R T I N G S E R V I C E S
21 1000 Bishop Street, Suite 401
22 Honolulu, Hawaii 96813
23 PHONE (808) 524-6288
24
25

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1 I N D E X
2 EXAMINATION BY: PAGE
3 Ms. Kawai 4
4 Mr. Ross 49
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17 EXHIBITS MARKED FOR IDENTIFICATION:
18 Defendants' A and B 8
19 Defendants' C and D 9
20 Defendants' E 50
21
22
23
24
25

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1 APPEARANCES:
2 For Plaintiff: ART ROSS, ESQ.
3 126 Queen Street
4 Honolulu, Hawaii 96813
5
6 For Defendants: KENDRA K. KAWAI, ESQ.
7 and MARIE M. GAVIGAN, ESQ.
8 Deputies Corporation Counsel
9 City and County of Honolulu
10 Honolulu Hale, Suite 110
11 530 South King Street
12 Honolulu, Hawaii 96813
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1 (The Reporter's Disclosure Statement was
2 made available to all counsel prior to the
3 commencement of the following proceedings.)
4 ROBERT C. MARVIT, M.D.,
5 called as a witness on behalf of the Defendants,
6 having been first duly sworn, was examined and
7 testified as follows:
8 EXAMINATION
9 BY MS. KAWAI:
10 Q. Good afternoon, Dr. Marvit.
11 A. Good afternoon.
12 Q. Could you state your name and address
13 for the record, please?
14 A. Robert C. Marvit, 1314 South King, Suite
15 862, Honolulu, 96814.
16 Q. Before we start, I am going to ask you
17 a few preliminary questions. Have you ever
18 had your deposition taken before?
19 A. Yes.
20 Q. How many times have you had your
21 deposition taken?
22 A. In my lifetime, 300, 400.
23 Q. Just for the record, I am going to go
24 over some guidelines. As you know, we are
25 taking your testimony. We are not in a

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EXHIBIT A

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1 courtroom here today, but you are sworn to
2 tell the truth. The testimony you give today
3 is going to be as if we were in court, and it
4 can be used later in court to confirm or
5 contradict any statements that you make at
6 this time.

7 If you don't understand a question, can
8 you please tell me, and I will try my best to
9 rephrase the question. Please don't guess.
10 However, you can estimate. If you answer a
11 question, I will assume that you understand the
12 question. Please answer all questions with
13 verbal responses in order to make the record
14 clear as possible.

15 Do you have any questions?

16 A. No, not at this time.

17 Q. Thank you. You were retained as an
18 expert in this matter by plaintiff's counsel,
19 Jack Schweigert; is that correct?

20 A. Yes.

21 Q. On what date were you retained?

22 A. October 5, 2005.

23 Q. Were you retained by telephone or
24 letter or neither of the two?

25 A. Both. He called first.

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1 Complex medical evaluation face-to-face is \$700.
2 Reports are based on an hourly rate.

3 Depositions are \$700 which includes
4 preparation, review of the record for the
5 purposes of making sure that it is accurate, and
6 you are guaranteed two hours whether you use them
7 or not. If I go to trial, the trial rate is for
8 half a day. I like to try to either go on at
9 9:00 or 1:00, and that is \$1,300.

10 Record reviews vary. It is done on how
11 long it takes reports. Same thing, it is an
12 hourly basis, varies between \$180 and \$200
13 depending on how tedious it is.

14 Q. How many hours have you put into this
15 case to date?

16 A. Couple. I should have had her pull the
17 bill. I mean it hasn't been extensive, I assure
18 you.

19 Q. And as I see in front of you, is that
20 the file for the case?

21 A. Yes.

22 Q. Is it possible to take a look at the
23 file?

24 A. Absolutely.

25 Q. Can we go off the record for a couple

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6

1 Q. And on what date did he call you?

2 A. October 5, 2005.

3 Q. And the letter that you say you also
4 received, was that dated October 5, 2005?

5 A. That is true, but it didn't necessarily
6 arrive until October 10th it looks like. She
7 date-stamps everything.

8 Q. What was the substance of your
9 telephone call with Mr. Schweigert?

10 A. He said "Can you do me a favor," the
11 reason being that there was a short deadline. I
12 don't generally do things on short deadline.

13 What he asked me to do basically was to
14 review a report by Dr. Byron Eliashof and comment
15 on it in a sense of any agreement, disagreement
16 for rebuttal purposes. The issue was a woman who
17 was exposed to police coming to her home without
18 a search warrant and suffered an emotional
19 reaction to this event.

20 Q. What is your hourly rate?

21 A. Depends on what I do.

22 Q. Could you differentiate between amongst
23 all the different rates that you may have?

24 A. Well, there is the Work Comp. no-fault
25 rate per 45-, 50-minute hour of about \$160.

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8

1 minutes?

2 (Discussion was held
3 off the record.)

4 MS. KAWAI: Let's go back on the record.
5 Dr. Marvit, after reviewing the
6 documents in your file, I'm going to be marking
7 Mr. Schweigert's two letters as both Exhibits A
8 and B.

9 MR. ROSS: What are they?

10 THE WITNESS: Transmittals.

11 MS. KAWAI: They are just to and from
12 Dr. Marvit to -- or from Jack Schweigert to Dr.
13 Marvit.

14 (Defendants' Exhibit A and B
15 were marked for Identification.)

16 Q. (By Ms. Kawai) And the question I have
17 of you is these apparently -- there is a set
18 of documents within your file that appears to
19 be doctor's notes. Are these Dr. Lum's
20 doctor's notes by chance?

21 A. Yes. Don't you see his name on it? It is
22 there some place.

23 Q. And is it correct to say that these are
24 notes, doctor's notes, from Dr. Steven Lum
25 from April 1, 2003 to August 18, 2004?

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1 A. Those are the dates that are on there.
 2 Q. And also contained within the file
 3 is -- is this a doctor's note from Steven Lum
 4 I guess certifying that Ofelia Coloyan was out
 5 of work from June 4, 2003 to June 21, 2003?
 6 MR. ROSS: If that is what it says.
 7 THE WITNESS: I'm supposed to answer the
 8 questions.
 9 MS. KAWAI: At this time, I would like
 10 to marked Dr. Lum's notes with regards to
 11 Ofelia Coloyan as Exhibit C and Dr. Lum's
 12 certification that Ms. Coloyan was out of work
 13 from June 4, 2003 to June 21, 2003 as Exhibit
 14 D.
 15 (Defendants' Exhibits C and D
 were marked for identification.)
 16
 17 MS. KAWAI: At this time, I am going to
 18 hand back your file. Thank you.
 19 Q. And before the end of the, before the
 20 we leave today, is it possible to get also
 21 marked as an exhibit your invoice to Mr.
 22 Schweigert?
 23 A. Sure.
 24 Q. And we will mark that as Exhibit E.
 25 MR. ROSS: How is that relevant to this

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1 A. They were civil cases, but they go back so
 2 many years, I can't remember. I mean, this other
 3 one was like about three years ago.
 4 Q. And the work -- well, based on what you
 5 have stated thus far in this deposition, it
 6 appears that your report wasn't an independent
 7 medical examination, correct, or would you
 8 classify it as one?
 9 A. Well, number one, I don't use that term.
 10 Number two, I was reviewing the record. I did
 11 not physically examine nor did I test her.
 12 Q. Instead of the term independent medical
 13 examination, what term do you use?
 14 A. I use complex medical evaluation because
 15 I'm not sure what the word independent means in
 16 this regard. I would like to think it meant that
 17 it was unbiased, but everybody comes to things
 18 with their own biases, I suppose. But the fact
 19 of the matter is complex medical evaluation or
 20 CME more appropriately describes this process.
 21 Q. How many reports in I guess throughout
 22 your career have you generated this type of
 23 report where you just review the report,
 24 another report itself, of a doctor?
 25 Sorry. Does that make sense? I kind of

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1 inquiry?
 2 MS. KAWAI: It is just to establish how
 3 much time he has invested in this case so far.
 4 MR. ROSS: Well, ask him the hours. The
 5 dollar amount I don't think is pertinent.
 6 Q. (By Ms. Kawai) Besides this case, have
 7 you done any other work with Mr. Schweigert?
 8 A. Yeah.
 9 Q. On how many cases?
 10 A. Two.
 11 Q. And --
 12 A. You are talking in my lifetime?
 13 Q. Yes.
 14 A. Or in the last five years?
 15 Q. Let's just say the last 20 years.
 16 A. Couple, three maybe.
 17 Q. And what type of cases were they?
 18 A. One was a case where a guy was in jail
 19 because he had a kind of a run-in with some
 20 motorcycle guy, and there was a question of
 21 whether or not one guy chased the other guy or
 22 some kind of road rage case.
 23 Q. Was it a civil or criminal case?
 24 A. It was a criminal case.
 25 Q. And the other two cases?

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1 fragmented it.
 2 A. What you are asking me is how many times
 3 in my career have I given a report based on
 4 simply a review of records?
 5 Q. Yes. Or not just records, but in this
 6 case you actually reviewed Dr. Eliashof's
 7 report and what Mr. Schweigert had given to
 8 you of Dr. Lum's notes, correct?
 9 A. Yeah. I call that review of records.
 10 Q. Okay. I mean, I'm just stating what
 11 records you have reviewed because there are
 12 several other documents, I mean, involved in
 13 this case other than just those records in
 14 your file.
 15 A. Your question if you recall was in my
 16 career, how many times have I generated a report
 17 based solely on the review of records or for that
 18 matter other doctors' reports?
 19 Q. Yes.
 20 A. Correct?
 21 Q. Yes.
 22 A. Is that what the question was?
 23 Q. Yes.
 24 A. Many times. How many times?
 25 Q. Yes.

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1 A. Couple hundred probably at least.
 2 Sometimes I, if -- I have had flurries
 3 periodically of will contests where people are
 4 dead, and you don't have a chance to examine
 5 them. They are called psychiatric autopsies. So
 6 it is purely review of medical records and
 7 doctors' opinions about what was going on.
 8 Q. But in cases where the examinee is
 9 still living, what percentage would you say
 10 out of those couple hundred that you have done
 11 is these kind of reports?
 12 A. I couldn't tell you. I couldn't give you
 13 a percentage.
 14 Q. Now we are going to go to your report.
 15 It is two pages, correct, and it is dated
 16 October 11, 2005; is that correct?
 17 A. Right. You want to mark that one, too?
 18 Q. No. I'm okay right now. Thank you.
 19 And you previously stated that you didn't
 20 examine Ms. Coloyan; is that correct?
 21 A. Correct.
 22 MR. ROSS: It has already been answered.
 23 Q. (By Ms. Kawai) Did you ever speak to
 24 her over the phone?
 25 A. No.

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1 these opinions.
 2 It may be that other information may
 3 become available to me or what have you, and,
 4 if so, I may have additional opinions or alter
 5 these opinions. But, if so, you should be duly
 6 notified by plaintiff counsel, and I would be
 7 more than happy to continue to be deposed.
 8 Q. (By Ms. Kawai) So at this time you are
 9 not going to elaborate or clarify?
 10 A. No, I'm just giving you the preface to my
 11 opinion because usually these questions come up
 12 like "Are you going to say anything more or
 13 different at trial?" I don't know. What are you
 14 going to ask me? I don't even know if I'm going
 15 to trial.
 16 Okay. I'm just giving you what I
 17 understand at the present moment, okay, although
 18 as they say in Latin, res ipso loquitur. The
 19 thing speaks for itself.
 20 In any event, my opinion is reasonable
 21 probability that Mrs. Coloyan as a result of her
 22 interaction with the police in this event
 23 suffered from an acute disorder of extreme
 24 stress, not otherwise specified.
 25 This diagnostic classification was

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1 Q. Is there any particular reason why you
 2 did not meet with Ms. Coloyan?
 3 A. Well, number one, I wasn't asked to.
 4 Number two, the sole purpose of my being retained
 5 as I understood it was simply to comment on the
 6 Eliashof report.
 7 Q. Just to confirm, other than those two
 8 documents of Dr. Lum's, you didn't review any
 9 other documents; is that correct?
 10 A. Just what is in the file.
 11 Q. At this time, can you please list all
 12 the opinions that you have in relation to this
 13 case?
 14 A. Objection. Broad, ambiguous, without
 15 foundation.
 16 MR. ROSS: What are you saying? Do you
 17 want him to repeat what he wrote in here?
 18 MS. KAWAI: Well, I want him to
 19 elaborate himself today what opinions he has
 20 with regards to this case.
 21 THE WITNESS: Okay. Not a problem. I
 22 won't be unduly obfuscating. All opinions to
 23 be rendered will be with reasonable medical
 24 probability based on information that I have
 25 available to me at the time I am rendering

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1 manifested by a series of psychiatric symptoms
 2 which are described in the records regarding
 3 anxiety, depression, insomnia, inability to
 4 concentrate, focus, not being able to go to work,
 5 being preoccupied, obsessing about things, having
 6 trouble eating, a variety of somatoform and
 7 affective disturbances.
 8 They were -- the symptoms and the
 9 diagnostic classification was significant enough
 10 for her to seek medical care, take time off from
 11 work and subsequently was able to return to work.
 12 I don't have any specific information regarding
 13 her current status since the limitation of
 14 records that I have.
 15 However, given the situation as described
 16 and reported by the records that I had available,
 17 it would seem that there would be a certain
 18 amount of residual difficulties that might occur
 19 as a result of this type of traumatic event.
 20 In that regard, as I tried to explain in
 21 my report, if we utilized the current version of
 22 the Diagnostic and Statistical Manual, Version
 23 IV-TR -- that is this one; we are all familiar
 24 with that -- then adopting Dr. Eliashof's
 25 categorization of adjustment disorder with mixed

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1 anxiety and depression, then the acute phase
2 lasts from three to four weeks and chronic phase
3 can last longer with a reduction in the intensity
4 and frequency of symptoms.

5 However, the question that might have to
6 be addressed -- and I can't say that with
7 absolute certainty -- is that when people get
8 sensitized as a result of trauma like if you got
9 allergic to penicillin, then exposure to a
10 similar situation may cause a type of
11 exacerbation of symptomatology.

12 So like many people, say, have an
13 automobile accident. They have a fear of
14 driving, and they notice how many bad drivers
15 there are out there. So if you have been
16 frightened by a policeman, then you may feel that
17 instead of protecting and serving, you are being
18 under scrutiny.

19 But since I don't know what her current
20 status is, I can't say that she has ongoing
21 symptomatology except for the fact that having
22 been exposed to a condition, there usually is a
23 sensitization, and it doesn't necessarily
24 evaporate although nothing ever happened.

25 I will give you two more opinions while --

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1 Q. Yes.

2 A. Well, I will answer the question. You
3 don't have to object to that one. I have got an
4 answer.

5 Dr. Eliashof retained by defense gave her
6 MMPI testing, and in his report, A, she didn't
7 seem to be a symptom magnifier on her MMPI. And
8 he didn't find her to be a person who was
9 magnifying things out of proportion, and he
10 annotates her background in that fashion as well
11 as Dr. Lum's medical records do not demonstrate
12 someone who is kind of a polysymptomatic, all
13 over the place type of individual that we see in
14 people who are symptom magnifiers.

15 MS. GAVIGAN: Can we go off the record?
16 (Discussion was held
17 off the record.)

18 MS. KAWAI: Let's go back on the record.

19 Q. Dr. Marvit, as to your third opinion
20 saying that Mrs. Coloyan is a law-abiding,
21 good citizen, what is your basis for that
22 opinion?

23 A. In the Eliashof records, he goes over her
24 work record, her family history and all that, and
25 their description is consistent with an

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1 I was waiting for you to finish writing. There
2 is no indication whatsoever that she is a
3 malingeringer, faker or symptom magnifier or someone
4 who is representing herself other than what she
5 really is. I wanted to make that clear.

6 I think that was clear from the records.
7 She comes across as a reasonably straightforward
8 person, even though I haven't read her deposition
9 or what have you, at least from the reports.

10 She also seems to be a kind of a
11 law-abiding, hard-working, good citizen. In
12 other words, she is a person of nonpathological
13 background as far as I can tell, not like she is
14 an eggshell or something that would overreact to
15 something. Okay. There is all I can think of at
16 the moment.

17 Q. As to your second opinion saying that
18 there is no indication that she is a
19 malingeringer, there was a long list that you
20 stated. Is the basis that she comes off as a
21 straightforward person, is that the only basis
22 you have to support that notion?

23 A. I think that you are asking me, well, what
24 is the basis of my saying that she is not a
25 malingeringer?

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1 individual who is pro-social, if you will, does
2 try to do the right family value thing.

3 Q. And as to the first opinion, with
4 regards to Ms. Coloyan suffering acute
5 disorder of extreme stress, other than what
6 you have already mentioned, are there any
7 other bases for that opinion?

8 A. On the basis of what? You mean could
9 there be another cause of this?

10 Q. I guess I should take a step back.

11 A. Good idea.

12 Q. What are your bases for your first
13 opinion with regards to the acute disorder of
14 extreme stress diagnoses?

15 A. Review of the record.

16 Q. Could you go into more detail on that?
17 I know you went over a list of things, and I
18 am just trying to follow up to see if there is
19 anything else.

20 A. Well, simply stated once again, a person
21 is exposed to a stressor that is outside the norm
22 of regular, everyday human experience. Their
23 reaction to it can be manifested by a series of
24 physiological and psychological symptoms
25 manifesting themselves as anxiety, tension,

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1 difficulty in focusing, depression, obsessional
2 thinking and so forth. All these things are
3 documented by Dr. Eliashof in his examination.
4 She described herself being upset, embarrassed,
5 shamed, so forth.

6 So the cause and effect dissociation
7 between her psychiatric symptomatology or
8 symptoms of severe emotional distress are well
9 stated by her and Eliashof in his report and are
10 causally connected to the events in question.

11 Q. Referring to our report on page one,
12 the first paragraph, it states "As a result,
13 she suffered severe emotional distress." Is
14 that your conclusion?

15 A. Yes.

16 Q. I just want to confirm because, as a
17 layperson, I am not sure if it is the same
18 thing. But when you refer to acute disorder
19 of extreme stress versus severe emotional
20 distress, is that the same thing?

21 A. No. Severe emotional distress, it is
22 almost like a legal term. It goes beyond the
23 normal anxiety one has when taking my deposition,
24 for example. So it is not a -- severe emotional
25 distress is not a diagnostic entity. It is

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23

1 more on that?

2 A. Once again, the manifestations of symptoms
3 presented in the records descriptively by her as
4 well as Eliashof and Lum are consistent with
5 severe emotional distress, an inability to work,
6 concentrate, focus, anxiety, depression,
7 psychosomatic complaints, and the like.

8 Q. On page two of your report, the third
9 full paragraph, it basically states "Therefore
10 I am in agreement with Dr. Eliashof's
11 conclusion that this woman suffered severe
12 emotional distress as a result of the
13 incident."

14 After reviewing Dr. Eliashof's report, I
15 don't recall reading that Dr. Eliashof stated
16 that Ms. Coloyan suffered severe emotional
17 distress. Do you recall if it is specifically
18 stated within his report?

19 A. Well, I will look, but I can tell you
20 this, that if it walks like a duck and it quacks
21 like a duck, it is probably a duck. So he has
22 described all the phenomena of extreme emotional
23 distress. Okay?

24 On page 33 of his single spaced report,
25 last line, "In response to this incident, it is

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22

1 simply a quantification of an emotional response,
2 you know, mild, moderate, severe. It is a matter
3 of degree, not kind.

4 Disorder of extreme distress is a
5 substitute for post-traumatic stress disorder
6 where I don't like the term post-traumatic stress
7 disorder applied to almost anything that a person
8 gets exposed to.

9 Sometimes you are in a stressful situation
10 that does not necessarily fit the criteria of
11 life threatening but is a disorder of extreme
12 stress, sort of like having the Internal Revenue
13 Service knock on your door although that probably
14 qualifies for something that is within the realm
15 of normal human experience.

16 But as a categorization of the stressor
17 per say, severe emotional distress is different
18 because it is the response. If you think about
19 it, there is stress which we all have, but
20 distress is different. It is where the stress
21 goes beyond a certain point.

22 Q. What is your basis for this conclusion
23 with regards to the severe emotional distress?

24 A. The records.

25 Q. Okay. Could you elaborate a little bit

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1 clear," I'm quoting now, "that Ms. Coloyan became
2 emotionally disturbed." That goes even beyond
3 distress. Being disturbed means being even more
4 dysfunctional than being distressed. I'm being
5 kind.

6 "She was anxious, depressed, had insomnia,
7 couldn't concentrate, had trouble eating and was
8 so distracted she was unable to work. She had
9 other symptoms, hyperreactivity to noise,
10 concerns that someone might be following her."
11 It walks like a duck and it quacks like a -- this
12 is severe emotional distress or, as he says,
13 emotional disturbance.

14 Q. So in other words, correct me if I'm
15 wrong, so severe emotional distress and
16 emotional disturbance are the same thing? Is
17 that what you are saying?

18 A. Mischaracterizes what I just said. No.
19 I said emotional disturbance is, as he describes
20 it, worse than severe emotional distress. I'm
21 just saying that emotional distress, severe
22 emotional distress is clearly indicated by
23 emotional disturbance and his list of symptoms
24 that she had.

25 Q. Let me see if I get this straight there

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1 then. Is emotional disturbance, is it more
2 severe than severe emotional distress? Is
3 that what you are saying?
4 A. What I'm saying is my -- you asked me the
5 basis of my severe emotional distress opinion. I
6 am now telling you it is Eliashof saying she was
7 emotionally disturbed and then lists all these
8 disturbances. I'm saying those things are the
9 basis of saying she had severe emotional
10 distress. That is all.
11 Q. Sorry, but so let me get this straight.
12 So all of the list of things that he lists
13 basically in his report that you had just
14 stated or quoted from his report, those are
15 elements of what equates to severe emotional
16 distress? I'm just trying to understand as a
17 layperson because I am not familiar with
18 medical terminology.
19 A. Oh, yeah? It is clearly consistent with
20 descriptively severe emotional distress. If you
21 recall way back when you initially asked, the
22 question was where did I get severe emotional
23 distress, and I was merely pointing this out to
24 you.
25 Q. I'm just trying to confirm. That is

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1 A. Yeah. I mean, I go in in my report. I
2 don't why he put all these quotes in for the
3 depositions. I haven't seen that ordinarily.
4 MR. ROSS: That included a deposition
5 from Ms. Coloyan, too.
6 MS. KAWAI: Yes.
7 THE WITNESS: Not the complete one, I
8 assume.
9 MR. ROSS: No, no.
10 MS. KAWAI: It wasn't the complete one
11 though. It was just the general summary.
12 Q. In your report on page one, second
13 paragraph, you state "In the report, he
14 documents the fact that she is a hard-working,
15 honest mother of four who reports that a
16 number of police officers intimidated her,
17 frightened her and illegally searched her
18 premises without permission. There is nothing
19 in the narrative that he describes that is
20 inconsistent with a honest representation of
21 her recollection of the events."
22 First of all, when you refer to "he," I'm
23 assuming you are referring to Dr. Eliashof,
24 correct?
25 A. Yes.

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1 all I am doing.
2 A. And I am doing it.
3 Q. Okay.
4 A. And she will tell you I'm being very nice.
5 Q. On page one of your report, first
6 paragraph, you state that she was given a
7 psychiatric examination by Dr. Eliashof. What
8 is your understanding of what that examination
9 consisted of?
10 A. Well, I can only say what the report would
11 indicate, that he examined -- it says
12 "Independent Psychological Examination" on this
13 report. I'm assuming he did it. I mean, I don't
14 know. Sometimes he has other people do things
15 for him.
16 There is fundamentally a face-to-face
17 interview, a review of records, apparently giving
18 her an MMPI and then the production of this
19 36-page tome.
20 MR. ROSS: Which is the depositions
21 taken in the case, right?
22 Q. (By Ms. Kawai) I guess what Dr.
23 Eliashof did was he actually summarized
24 documents that he reviewed, some being
25 depositions and others being documents?

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1 Q. And you claim within that first
2 sentence that I read that Dr. Eliashof states
3 that Ms. Coloyan is honest, correct?
4 A. Yeah.
5 Q. Could you tell me where in Dr.
6 Eliashof's report that it states that?
7 A. Page 35, "She appears to be an individual
8 who is conscientious, hard-working and
9 industrious." Those are characteristics of
10 honesty.
11 Q. Sorry. Where are you reading?
12 A. Page 35.
13 MR. ROSS: Third paragraph.
14 Q. (By Ms. Kawai) But just to clarify,
15 that was just your interpretation of his
16 report because he never specifically states
17 that?
18 A. I am not finished.
19 Q. Okay. Sorry.
20 A. Remember, walks like a duck.
21 Additionally, next paragraph, he goes on
22 to describe her behavior which was also his
23 impression during this evaluation. I point out
24 also in my report that there is a great deal of
25 consistency with deposition, records, her

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1 representations to him, her performance on the
2 MMPI. All of these things are indicia of honest
3 representations.

4 Now, granted, I am not as wordy as 36
5 pages here, but that is my putting together in a
6 rather concise fashion the fact that she is
7 hard-working, honest, and I realize the term
8 conscientious may not in your lexicon somehow
9 equate to honesty, but I suppose we could look it
10 up in the dictionary. Conscientious sometimes is
11 well-intended. So, yes, I think that all things
12 are consistent.

13 Q. Are you aware that Dr. Eliashof
14 specifically stated in his report that there
15 appears to be problems with Ms. Coloyan's
16 memory regarding the facts and details
17 relating to this incident?

18 A. Yeah.

19 Q. And taking that into consideration, you
20 still take the position that she is -- I mean,
21 what you had said with regards to your
22 opinion?

23 A. Yes, and I am going to give you the basis
24 of that since you asked. When a person is
25 exposed to extreme stressors, their ability to

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1 throughout the duration of the deposition,
2 would you still take that position?

3 A. Absolutely. I think a deposition for a
4 woman like this is extremely stressful, and
5 having to recall events from a traumatic incident
6 is going to cause an exacerbation.

7 It is like your allergic to penicillin.
8 It is going to bring all that stuff back, and you
9 are in with all these people. You know,
10 depositions can be terribly intimidating to
11 people especially if you are a witness.

12 MS. GAVIGAN: You are certainly not
13 speaking about yourself, Dr. Marvit.

14 THE WITNESS: I could say if you are a
15 party, although some experts are.

16 Q. (By Ms. Kawai) Dr. Marvit, you also
17 state that "Mrs. Coloyan's recollection of
18 events was an honest representation of what
19 happened," correct?

20 A. I didn't say that.

21 Q. What did you say then?

22 A. About what? The question about her
23 honesty had to do with where did I find that she
24 was honest in Eliashof's report, and I described
25 that. Then you asked me -- yeah, I'm going to

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1 recall events that occurred during the time of
2 the stressors is frequently scrambled as a result
3 of neurophysiological changes that occur in the
4 brain. And if you think about it, if you get
5 anxious and your heart is beating fast and your
6 blood pressure goes up and you are sweating and
7 you are anxious and you don't know what is going
8 to happen and there are all these people with
9 guns and stuff, it is going to be difficult to
10 remember.

11 There is a great deal of literature on
12 eyewitness testimony. People -- I examined
13 someone who was identifying a criminal that says
14 they were held up. While someone is putting a
15 gun to your face and you are exposed to them for
16 one minute, are you going to be able to really
17 remember every little detail? No.

18 So, yeah, I don't have a problem with her
19 difficulty in having 150 percent recall given the
20 circumstances of this event.

21 Q. If I were to tell you that during her
22 deposition, because you haven't read her
23 deposition testimony, correct?

24 A. Right.

25 Q. That her story had basically changed

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1 test your memory inexpensively.

2 Then you asked me whether or not her
3 inconsistencies in recollection had any influence
4 on whether or not I considered her honest, and I
5 explained to you no, and then I explained to you
6 why. Then you said that she shifted around in
7 deposition, and I explained that, so.

8 Q. What I'm referring to actually just for
9 clarification is the second sentence that I
10 read to you out of your report on page one,
11 second paragraph, with regards to "There is
12 nothing in the narrative that he describes
13 that is inconsistent with an honest
14 representation of her recollection of the
15 events."

16 A. Correct.

17 Q. Because I take it as the previous
18 sentence was just like a personality trait,
19 being honest, and this I take it as a
20 different situation with regards to her
21 particular recollection.

22 A. My review of his description of his
23 interview and his record review seemed to me with
24 reasonable medical probability that her
25 recollection was an honest representation. I

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1 just explained to you the second time what could
2 account for some discrepancy. That doesn't make
3 it dishonest.
4 Q. In this kind of situation, when you are
5 assessing something with regards to someone's
6 honesty, don't you think it is necessary to
7 interview that person yourself?
8 A. Well, maybe if someone else has called her
9 dishonest. I mean, if someone is hired by the
10 other side and says that she is honest and
11 conscientious and I don't see anything that I
12 have reason to doubt that, I'm not -- I think it
13 is always good to examine someone myself, but I
14 wasn't asked to do that.
15 Q. Because I can tell you this, as an
16 attorney, I like to be as thorough as
17 possible. So I'm just asking you these
18 questions just, you know, for your own
19 personal knowledge, did you feel it was
20 necessary to interview or examine her?
21 A. To determine her honesty?
22 Q. Or just to determine or to create a
23 report as requested by plaintiff's counsel.
24 A. No, because I was asked to review that
25 report. Now I understand as an attorney, you are

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1 Q. On page one, second paragraph, you
2 state "Her description of being upset,
3 embarrassed, especially when the neighbors
4 were questioned and the development of
5 stress-related symptoms after the event is
6 clear." What is your basis for that
7 statement?
8 A. It is described in Eliashof's report.
9 Q. But I want to hear it in your words.
10 A. You want to hear it in my words?
11 Q. Well, I want to hear it in terms of is
12 there any basis -- what is your basis for
13 coming to that conclusion, or do you
14 completely agree with Dr. Eliashof in how,
15 what he based it on?
16 A. Do I have a choice? I have to rely on
17 Eliashof's record review and description of his
18 interview examination as well as Dr. Lum,
19 although Dr. Lum doesn't have all those
20 additional things.
21 It was clear to me by Eliashof's
22 description that she represented this cause and
23 effect association to him with regard to the
24 neighbor, the embarrassment and so forth, and it
25 appears in many different places in the report.

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1 wondering "Well, gee, here is a guy like Marvit.
2 Why aren't they asking him to do kind of damage
3 assessment and see whether she has got this, that
4 or the other thing?" I don't know. You have got
5 to ask him that.
6 He just asked me simply -- we discussed
7 this on the phone -- would I do this? There was
8 a short time. I reviewed it. I gave him the
9 two-page report. That is it. I don't actually
10 do things that I am not asked to do. Sometimes I
11 don't even do things I am asked to do.
12 Q. So is it safe to assume with regards to
13 the documents, you didn't feel -- or based on
14 the fact that he asked you, he being
15 Mr. Schweigert, asked you to do something
16 specifically and gave you those documents he
17 thought were necessary to do the report, you
18 didn't feel it was necessary to review the
19 documents that Dr. Eliashof reviewed, too?
20 A. Well, there were certain limitations. And
21 as far as feeling the need, although a rather
22 interesting choice of words, I would have to be
23 suspicious that Eliashof was not objectively or
24 independently reporting his record review, but I
25 didn't suspect that.

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1 Q. On page one, the third paragraph, you
2 state that "Mrs. Coloyan was not trying to
3 fake bad or in any way act as a malingerer,"
4 correct?
5 A. Yes.
6 Q. Could you elaborate on what the term
7 fake bad means?
8 A. In the MMPI, there is a, what is known as
9 a fake bad scale where a person presents
10 themselves as fundamentally polysymptomatic of a
11 severe nature that is inconsistent statistically
12 with what might be expected on normed tables. So
13 quite the opposite. If anything, she presents
14 herself as being less symptomatic.
15 So in some respects -- I didn't have the
16 MMPI. But what he says is basically she presents
17 herself as being virtuous and blah, blah, blah,
18 that kind of stuff. So it is like faking good.
19 You minimize pathology.
20 Q. Could you briefly tell us what the
21 traits of a malingerer are?
22 A. The traits of a malingerer. Well, I read
23 an article called "Malingering is an Accusation
24 Rather Than a Diagnosis," presented at the World
25 Congress of Psychiatry in Banff some years ago.

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1 Malingering is feigning symptoms that you
2 in fact do not have to achieve a purpose that you
3 would not otherwise get if you didn't have these
4 symptoms. That is quite different than secondary
5 gain which some layperson and even lawyers
6 somehow equate with that.

7 Secondary gain is unconscious. You might
8 say, "Gee, if secondary gain is all the kind of
9 benefits that you get from being sick, gee, what
10 is primary gain then?" No one seems to ask that
11 question.

12 In any event, clearly the Diagnostic and
13 Statistical Manual looks at malingering as to
14 some extent being context dependent. You know,
15 it can happen in people that are involved in
16 litigation and manifest symptoms over and above
17 that that would be expected for any of the events
18 in question. But more than that, there is a
19 certain psychopathic lack of conscience trend
20 true malingers have. They are basically con
21 people.

22 So the profile generally is individuals
23 who have never really held a job for very long,
24 are extremely manipulative, tend to overreact to
25 things and feel that they need to be able to get

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1 "An MMPI profile suggests that she views her
2 adjustment as adequate." Can you elaborate on
3 what that means?

4 A. Yeah. That is what I just got through
5 explaining to you, yeah, well, when I said that
6 she tends to fake good or not be symptomatic on
7 her MMPI. So she tries to minimize pathology.

8 Q. Prior to drafting your report, did you
9 ever speak to Dr. Steven Lum?

10 A. No. I didn't even speak to Schweigert.

11 Q. Do you agree with Dr. Eliashof's
12 opinion that Mrs. Coloyan experienced a period
13 of emotional distress which cleared after
14 three weeks with no psychiatric treatment?

15 A. No.

16 Q. And why is that?

17 A. Because I don't know that to be a fact.
18 His point is that -- yes, I agree with him up to
19 the point where he said, well, it turned off and
20 on like a light switch basically. In three
21 weeks, she was back to work and business as usual
22 as if nothing happened.

23 I don't think -- that is not the way it
24 works. Why? Well, because that's my clinical
25 experience tells me that that is not the way it

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1 the jump on everybody else.

2 But the pure malingerer in my experience
3 is a relatively rare occurrence. I mean, I do a
4 fair number of examinations over the last 40
5 years, I hate to say, and the absolute true
6 malingerers tend to be really a very small
7 number. I mean, I could tell you maybe less than
8 1 percent.

9 What you have is people who manifest wild,
10 exaggerated symptomatology, and those are the
11 kinds of things that, you know, hit the newspaper
12 like the woman who drops coffee in her lap and
13 sues McDonald's and people that claim
14 post-traumatic stress disorder from finding a
15 finger in chili at Wendy's, those.

16 So they are as opposed to people that are,
17 say, conscientious objectors because they don't
18 want to go to Vietnam. So there is a range of
19 things that occur, but if they are talking about
20 the true malingerer being the psychopath who is
21 feigning something to gain economic or other
22 advantage and has this sort of track record of
23 ne'er do well, that is the spectrum we are
24 talking about.

25 Q. In that same paragraph, you state that

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1 works.

2 Q. If you were to see Mrs. Coloyan's
3 updated medical records and there was no
4 indication that she was going through any type
5 of stress, emotional distress, emotional
6 disturbance, would you still have that same
7 opinion?

8 A. Well, I would like to examine her if that
9 is the issue because medical records don't always
10 reflect the entirety of the situation. Granted,
11 she is not a person who complains. Some people
12 suffer in silence inwardly. She wants to appear
13 healthier than perhaps she is.

14 Q. Turning to your issue with regards to a
15 light switch going off and on and you also
16 state that "Emotional distress in her case
17 seems to linger on," what is your basis for
18 that statement?

19 A. Well, you just helped. You pointed out
20 that, you know, in her deposition she seemed to
21 be waffling around, and I get the impression from
22 Eliashof that initially she was tense but she
23 relaxed. In the deposition excerpts he had
24 indicated that she had concerns about her
25 embarrassment and the neighbors and all that kind

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1 of thing.

2 Now, granted that this event happened two
3 years previously. My assumption was it happened
4 on June 3, 2003, and he examined her in July or
5 something of 2005, approximately two years.
6 There is nothing in his report that states that
7 she, other than she went back to work, that she
8 was asymptomatic. As a matter of fact, he keeps
9 on going on talking about all these disturbing
10 issues.

11 So there is a kind of like, "Yeah, all
12 this bad stuff happened there, and then I saw her
13 and she seemed to be okay." I don't know.

14 Q. This is just to confirm everything you
15 have answered up till now. Do you agree that
16 Mrs. Coloyan had a primary psychiatric
17 diagnosis of adjustment disorder with mixed
18 anxiety and depressed mood?

19 A. You could say that.

20 Q. Do you also agree that this psychiatric
21 condition is defined as, quote, "Development
22 of emotional behavior symptoms in response to
23 identifiable stressors occurring within three
24 months of the onset of the stressors," end
25 quote?

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1 And the first primary issue for her, her
2 problems, was based on her statement saying that
3 she was concerned about her son and that the
4 police possibly might arrest him for being
5 involved in drugs?

6 A. Well, you can correct me if I'm wrong, but
7 I understood from my preliminary conversation
8 with Mr. Schweigert that her son was in fact not
9 involved in dealing drugs and that Eliashof says
10 at the bottom of page 35, "Mrs. Coloyan takes
11 great pride in being an upright individual. For
12 her to be confronted with the possibility that
13 her son was involved in drug dealing, much less a
14 warrant for his arrest, to have her neighbors be
15 informed that this occurred and have the police
16 search her house would be upsetting."

17 That to me is saying that the police are
18 responsible for her emotional disturbance. That
19 is the way -- you can correct me if I am wrong,
20 if I'm overreading it, but, gee, that is what it
21 sounds like to me.

22 Q. But if you read on through the rest of
23 the paragraph, I mean, that is only a little
24 capsule summary of --

25 A. That is the first sentence.

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1 A. Yes.

2 Q. Do you agree with Dr. Eliashof's Axis
3 IV diagnosis regarding concerns about her son
4 being involved in drugs and possibly arrested
5 was the cause of these problems?

6 A. Cause of what problem?

7 Q. Her emotional distress problems.

8 A. No, her emotional distress was
9 precipitated by the police.

10 Q. On what evidence or bases do you come
11 to that conclusion?

12 A. The description of the police barging in
13 there warrantless searching for her son who is in
14 Alaska or what have you and that whether or
15 not -- and then they say that, you know, because
16 he is a drug dealer, okay? So if you are trying
17 to in any way imply that Eliashof giving the
18 opinion that the reason she has this emotional
19 disturbance is because her son is a junkie, I
20 would disabuse you of that conclusion.

21 Q. If you refer to page 36 of Dr.
22 Eliashof's report, he specifically lays out in
23 first, second and third, the reasons for her
24 emotional disturbance, and that is why I
25 raised that with you.

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1 Q. Well, yes, that is the premise, and
2 then basically he puts it into perspective as
3 to saying first, second and third, these are
4 the --

5 A. He doesn't say first, second and third.
6 He says for Mrs. Coloyan the primary issue, which
7 may include what she was thinking about in 2005,
8 was a concern about her son. Well, gee, why
9 should she have a concern about her son? The
10 cops break in there telling her he is a junkie
11 and searching the place and drawing guns and God
12 only knows what. Sure.

13 And the third -- you know, second in
14 importance, the embarrassment with the neighbors,
15 hey, read the sentence. Having the house
16 searched? She had nothing to hide, sure. That
17 wasn't the problem. The problem was breaking in
18 there and scaring the bejesus out of her.

19 Q. If I were to tell you today that in her
20 deposition she clearly stated that at the time
21 the police were present, she wasn't worried
22 about her son, it wasn't even on her mind,
23 would that change your -- and then now she
24 states that in -- she stated to Dr. Eliashof
25 during her examination that she is extremely

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1 concerned about her son and whether or not he
2 would be arrested?
3 A. Well, we don't know what she said to
4 Eliashof specifically. He is drawing that
5 conclusion. Well, certainly at the moment that
6 the police were there, you know, she is having to
7 deal with the situation, and if it raises the
8 possibility that is a concern, yeah. That is
9 kind of retrospective.

10 It is sort of like if you have a
11 life-threatening experience and you survive it,
12 then you have the opportunity at your leisure to
13 begin to think about what got you into that
14 situation in the first place.

15 Q. On page two, the second paragraph, you
16 state "In his discussion, he states that in
17 response to this incident, it is clear that
18 Ms. Coloyan became emotionally disturbed. She
19 was anxious, depressed, had insomnia, could
20 not concentrate. She had trouble eating and
21 was so distracted she was unable to work."

22 I have no quarrel with that. So just to
23 confirm, I realize that this was a statement made
24 by Dr. Eliashof. So you are saying that you
25 agree with what is stated there based on the

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1 mentioned that the police entered into the
2 home with their guns drawn?

3 A. No, I was using that metaphorically, but
4 they were armed, I assume.

5 MR. ROSS: Whether they used it or not,
6 I don't know. The record is not clear on that.
7 I couldn't determine that.

8 Q. (By Ms. Kawai) And you also mentioned
9 that you referred to the term junkie like the
10 plaintiff's son or the police had told Ms.
11 Coloyan that her son was a junkie or something
12 to that effect. Could you --

13 A. I never stated what the police said. The
14 implication was that he was a drug dealer. They
15 were looking at him because of -- they were
16 looking for him because of his involvement in
17 drugs.

18 Q. And was that your understanding of why
19 the police went to Ms. Coloyan's house on the
20 day of the incident?

21 A. Yeah.

22 Q. And just to confirm, you were asked by
23 plaintiff's counsel to review Dr. Eliashof's
24 report, correct?

25 A. Yes.

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1 information that you have?

2 A. Yes. That would seem to be a logical
3 response to the incident he described.

4 Q. You stated in your report that
5 "Emotional distress may turn on suddenly as a
6 result of a stressor." What type of stressors
7 would be involved to basically turn on the
8 light switch? I know you previously stated
9 interaction with maybe the police, but are
10 there any other instances?

11 A. Hold on. Are you referring to this
12 incident or some future incident or what? I
13 mean, what kind of stressor?

14 Q. What stressor in the future.

15 A. Well, maybe someone knocked on her door in
16 the middle of the night, anything that could
17 symbolically or practically represent the
18 phenomenon that set this whole thing in motion.

19 You want to take a few minutes and discuss
20 it?

21 Q. Yes. Can we take a break?

22 A. All right.

23 (Recess was taken.)

24 MS. KAWAI: Back on the record.

25 Q. Dr. Marvit, before the break, you had

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1 Q. And to comment on it with any rebuttal
2 commentary, correct?

3 A. Yes.

4 Q. And just to confirm, is it your opinion
5 that all of Mrs. Coloyan's emotional distress
6 was caused by the police coming to her house
7 on the date of the incident?

8 A. Which emotional distress? I mean, you are
9 talking about at the time or now, later?

10 I'm saying, yeah, there doesn't seem to be
11 any indication on the record that she suffered
12 from severe emotional distress prior to this
13 incident, that it is clear that she suffered
14 severe emotional distress as a result of this
15 incident. That is all.

16 Q. Are there any other factors that caused
17 her severe emotional distress?

18 A. When? When she took her deposition?
19 Maybe. I don't know.

20 Q. No, on the date of the incident.

21 A. On the date of the incident, I have no
22 evidence or information or documentation that
23 there were other things going in her life that
24 would account for this panoply of symptoms.

25 Q. Just to clarify it, I know you refer to

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1 the incident in your report and I just want to
2 clarify is the incident that you are referring
3 to the police coming to Ms. Coloyan's house on
4 the date of the incident? Sorry. On the date
5 on June 3, 2003?

6 A. Yes.

7 MS. KAWAI: Thank you. I have no
8 further questions.

9 MR. ROSS: I have one question, doctor.

EXAMINATION

10 BY MR. ROSS:

11 Based on the narrowness of the
12 assignment Mr. Schweigert gave you in this
13 case, was there anything in reviewing
14 Eliashof's or Dr. Lum's records that would
15 trigger your need to have wanted to see the
16 material they looked at or had an interview
17 with the lady? Was there any need for that
18 triggered by what you read?

19 A. Only in the sense that if I didn't have
20 her current status that I was relying on the fact
21 that they were representing what her situation
22 was in a descriptively accurate manner.

23 Q. Okay. The last entry you had from Dr.

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1 I, ROBERT C. MARVIT, M.D., do hereby
2 certify that I have read the foregoing pages
3 1 through 50, inclusive, and corrections,
4 if any, were noted by me and that same is now a
5 true and correct transcript of my testimony.

6 Dated _____
7
8
9

10 ROBERT C. MARVIT, M.D.
11
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13 Signed before me this _____
14 day of _____, 2006.
15
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1 Lum was something in 2005?

2 A. No, 2004.

3 MR. ROSS: I don't have anything
4 further.

5 MS. KAWAI: Nothing further.
6 (The deposition concluded at 3:35 p.m.)

7 --o0o--

8 (Defendants' Exhibit E was
9 marked for identification.)
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1 STATE OF HAWAII)
2 CITY AND COUNTY OF HONOLULU) SS.

3 I, PHYLLIS K. KUSHINER, CSR, a Notary
4 Public in and for the State of Hawaii, do hereby
5 certify:

6 That on Thursday, January 12, 2006 at 2:00
7 p.m. appeared before me ROBERT C. MARVIT, M.D., the
8 witness whose testimony is contained herein; that
9 prior to being examined, the witness was by me
10 duly sworn or affirmed; that the proceedings were
11 taken in machine shorthand by me and were
12 thereafter reduced to typewriting under my
13 supervision; that the foregoing represents to the
14 best of my ability a correct transcript of the
15 proceedings had in the foregoing matter.

16 That, if applicable, the witness was
17 notified through counsel by mail or by telephone
18 to appear and sign; that if transcription is not
19 signed, either the reading and signing were waived
20 by the witness and all parties, or the witness has
21 failed to appear, and the original is therefore
22 kept on file without signature pursuant to Court
23 rules.

24 I further certify that I am not counsel
25 for any of the parties hereto nor in any way
interested in the outcome of the cause named in
the caption.

DATED: January 30, 2006

PHYLLIS K. KUSHINER, CSR NO. 147
Notary Public, State of Hawaii
My commission expires 4/24/07

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